No. 81-2027

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

CARPENTERS 46 NORTHERN CALIFORNIA COUNTIES JOINT APPRENTICESHIP AND TRAINING COMMITTEE AND TRAINING BOARD,

Petitioner,

vs.

LINDA ELDREDGE and CHRISTINE A. MAZUR, individually and on behalf of all others similarly situated,

Respondents.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

ALBERTA M. BLUMIN

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Counsel for Respondents

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MOTION FOR LEAVE TO PROCEED

IN FORMA PAUPERIS

The respondent, Linda Eldredge, asks leave to file the accompanying BRIEF IN OPPOSTION to the Petition for a Writ of Certiorari without prepayment of costs and to proceed in forma pauperis pursuant to Rule 46. Leave to proceed in forma pauperis was not sought in any court below.

The respondent's affidavit in support of this motion is attached hereto.

Alberta M. Blumin

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Oakland, CA 94609

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AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, Linda Eldredge, being first duly sworn, depose and say that I am a respondent in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I further swear that I do not know the whereabouts of respondent Christine A. Mazur and that I know of no way to locate her although I have made efforts to do so.

I further swear that the response which I have made to the questions and instructions below relating to my ability to pay the cost of this proceeding are true.

1. Are you presently employed?

ANSWER: Yes. I am a full-time student who works part-time selling tickets and popcorn at the Gateway Cinema,

215 Jackson Street, San Francisco, California. My wage there is $3.60 per hour and I earn approximately $260 per month.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

ANSWER: Yes. I have earned approximately $120 in the past twelve months from self-employment cleaning private homes.

3. Do you own any cash or checking or savings account?

ANSWER: Yes. The value of my checking account is $15, approximately.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

ANSWER: I own no real estate, stocks, bonds, notes or other valuable property. I own a 1967 Volkswagon Beetle that is inoperable and has a present value of about $300.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

ANSWER: I am self-supporting.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

Jose Ellwood

Subscribed and sworn to before me this 14th day of June, 1982.

Barbara Bartholomew
NOTARY PUBLIC

OFFICIAL SEAL
Barbara Bartholomew
NOTARY PUBLIC-CALIFORNIA
Principal Office in MARIN County
My Commission Expires Dec. 18, 1983

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Certificate of Service

I hereby certify that on this 29th day of June, 1982, three copies of Respondent's MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS were mailed, postage prepaid, to Stephen McKae, Esq. of Moore, Sizoo & Cantwell, 1333 Broadway, Suite 1040, Oakland, California 94612, Counsel for Petitioner. I further certify that all parties required to be served have been served.

Alberta M. Blumin

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Oakland, CA 94609

Counsel for Respondents.

ORIGINAL

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BRIEF IN OPPOSITION

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TABLE OF AUTHORITIES

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United States v. Sheet Metal Workers Union, 416 F.2d 123 (8th Cir. 1976)	5

Other Authorities:	
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Respondents.

BRIEF IN OPPOSITION

The respondents respectfully request that this Court deny the petition for writ of certiorari, seeking review of the Ninth Circuit's opinion in this case. That opinion is reported at 662 F.2d 534 (1981).

STATEMENT OF THE CASE

In 1975 respondents Linda Eldredge and Christine A. Mazur filed suit under Title VII against petitioner Carpenters 46 Northern California Counties Joint Apprenticeship and Training Committee ("JATC") alleging that the JATC maintained entrance requirements to its carpentry apprenticeship program that discriminated on the basis of sex.

The JATC is and was an independent legal entity, a trust, that was created by a written Trust Agreement

between various locals of the United Brotherhood of Carpenters and Joiners of America and several contractor associations representing employers. The purpose of the JATC was to establish programs to educate and train journeymen and apprentices. The Trust Agreement provided that the JATC's construction of the Trust Agreement was to be binding on all signatory employers, associations and unions. The petitioner JATC, pursuant to the Trust Agreement, established a carpentry apprenticeship program and set up entrance requirements to that program, including a requirement that an applicant secure a commitment of employment from an employer who was a signatory to the Trust Agreement. Further, the petitioner JATC established as an authorized means of securing that employment commitment a systemb which became known as the "hunting license" system. Under that JATC system, an applicant apprentice approached a signatory employer to convince that employer to hire him or her.

Respondents, in 1975, applied unsuccessfully to become indentured apprentices in petitioner's carpentry apprenticeship program. In 1975, as in previous years, the JATC maintained its commitment of employment prerequisite and by March of 1976, 98% of the applicant apprentices who became indentured apprentices secured ghd necessary employment commitment via the "hunting license" system. Although an applicant apprentice could also, theoretically, meet the JATC's employment commitment requirement by obtaining a job referral from a "new applicant" list set up by petitioner JATC, such referrals rarely occurred. Respohdents were unable to meet petitioner's commitment of employment prerequisite. In 1975, as in prior years, the "hunting license" was the primary method by which indentured apprentices secured their initial employment commitment and, as a result,

in 1975, as in each of the three years prior to 1975, no more than a handful of the thousands of carpentry apprentices in petitioner's program were women.

The trial court, on July 9, 1979, dismissed this action due to respondents' failure to join as parties some 4,500 individual contractor employers who were signatories to the Trust Agreement, holding that such parties were "indispensable" within the meaning of Rule 19, Federal Rules of Civil Procedure. In its opinion the district court recognized that these numerous absent parties, as a practical matter, could not be joined. See pages 14 - 15 and 17 - 18 of Appendix D to the JATC's Petition for Writ of Certiorari.

The Ninth Circuit reversed the trial court, holding that "complete relief" between the parties could be afforded in the absence of the individual employers and that it was mere conjecture that absent employers would impede any judgment the district court might finally render in the case. Further, the Ninth Circuit recognized that

> The trust fund agreement grants full authority to JATC to structure the apprenticeship program and to select apprentices. We conclude that the employers by contract ceded to JATC whatever legally protectible interest they may have had in selecting apprentices to be trained.

See page 12 of Appendix A to the Petition for Writ of Certiorari. Absent employers, to the extent their rights were affected by the litigation, could move to intervene pursuant to Rule 24, Federal Rules of Civil Procedure. Accordingly the Ninth Circuit decided that the absent employers were neither necessary nor indispensable parties within the meaning of Rule 19, Federal Rules of Civil Procedure.

REASONS WHY WRIT SHOULD BE DENIED

Petitioner argues, incorrectly, that the Ninth Circuit's decision herein is in conflict with those of other Circuit Courts of Appeal. However, examination of the decision below reveals that it conforms with decisions of other courts and with law established by the leading United States Supreme Court decision construing Rule 19, Federal Rules of Civil Procedure, Provident Tradesmens Bank and Trust Company v. Patterson, 390 U.S. 102 (1968).

First petitioner argues that because the rights of the absent employers may be affected by a decree against petitioner such absent employers are indispensable parties. However, in Provident, supra at 110, the Court held that while a judgment could not be res judicata or legally enforceable against an absent person,

> It obviously does not mean either (a) that a court may never issue a judgment that, in practice, affects a nonparty or (b) that (to the contrary) a court may always proceed without considering the potential effect on nonparties simply because they are not "bound" in the technical sense.

The United States Supreme Court went on to say in Provident, supra at 118, that "whether a person is 'indispensable', that is, whether a particular lawsuit must be dismissed in the absence of that person, can only be determined in the context of the particular litiation."

The Ninth Circuit below fully and properly considered the absent employers' interests in the context of this litigation. The Court recognized that the employers were in no danger of losing any rights they presently enjoy in that as signatories to the Trust Agreement they had, before this litigation ensued, agreed to be bound by whatever structure and entry requirements the petitioner JATC chose for its apprenticeship programs. The Trust Agreement itself did not guarantee the employers any particular selection

criteria for carpentry apprentices. To ensure that the absent employers would lose no rights they presently have, the Ninth Circuirt ordered that any decree which may be afforded respondents "cannot go beyond the authority granted JATC under the trust fund agreement." See page 13 of Appendix A to the Petition for Writ of Certiorari. The Court below further recognized that any employers or employer associations who so chose could move to intervene in it pursuant to Rule 24, Federal Rules of Civil Procedure. See Moton v Bricklayers, 17 FEP Cases 537, 542 (D.C. Cir. 1976).

The Court below also found that an adequate decree could be afforded respondents without the employers being joined as parties.[1/] This decision comports with others that have considered similar facts. United States v. Sheet Metal Workers Local 36, 416 F.2d 123, 132 n. 16 (8th Cir. 1976); Rule v. Ironworkers, Local 396, 568 F.2d 558 (8th Cir. 1977); EEOC v. Local 638, Sheet Metal Workers Union, 565 F.2d 31, 34-35 (2d Cir. 1977) and Kaplan v. Stage Employees (IATSE), 525 F.2d 1354, 1361 (9th Cir. 1975).

Cases cited by petitioner as "in conflict" with the Ninth Circuit are not. Rather those cases are distinguishable on their facts. See Provident, supra at 118. In Evans v. Sheraton Park Hotel, 503 F.2d 177 (D.C. Cir. 1977) the Court decided that a rule requiring sex-segregated locals could not be enjoined in the absence of the international union which had the power to change the rule. The Court held that the international was a necessary party under Rule 19(a) that could be joined. Gilmore v. Kansas

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1/ Petitioner cites Southbridge Plastics Division v. Local 759, 565 F.2d 913, 916 (5th Cir. 1978) and Stevenson v. International Paper Co., 516 F.2d 103, 118 (5th Cir. 1975) for the proposition that courts have no power to change terms of employment if the change will not remedy past discrimination. These cases, in fact, hold that seniority provisions that are not discriminatory cannot be changed.

City Railway Company, 509 F.2d 48 (8th Cir. 1978), without reference to Rule 19, held that seniority provisions of local unions were partially responsible for discrimination and ordered that the locals be joined. There was no indication that such joinder was not possible. In the present case, unlike Evans and Gilmore, respondents challenge only those rules promulgated by the JATC alone. Respondents do not seek to change any collective bargaining provision of any agreement to which the absent employers are a party. Also, in the present case, unlike in Evans and Gilmore, joinder of the 4,500 absent employers is admittedly impossible due to their numbers.

Petitioner also cites Cedillo v. International Assn. of Bridge and Structural Ironworkers, Local Union No. 1, 603 F.2d 7 (7th Cir. 1979), as "in conflict" with the decision below. In Cedillo the Court held it was error to dismiss an apprenticeship committee which the appellate court found to be a Rule 19(a) necessary party. Again, in Cedillo there was no question but that joinder of the absent apprenticeship committee was possible.

Finally, petitioner also relies on NLRB v. Doug Neal Management Company, 620 F.2d 1133 (6th Cir. 1980). In Doug Neal an NLRB order requiring the rehire of certain laid off employees was reversed because the court found the lay offs were not the result of anti-union animus and, additionally, that the NLRB had failed to join an indispensable party, the owner of the building which employed Doug Neal as its manager, rendering the decision unenforceable. Unlike in Doug Neal respondents do not seek hire by the absent employers, rather they seek entry to petitioner's apprenticeship program which, due to petitioner's entry requirements, bars the entrance of all but a handful of women.

Petitioner also appears to raise the question in its brief of whether respondents can state any claim for

relief against it when it is the only party defendant in the case. However, this issue was decided adversely to petitioner by the district court and was not raised by petitioner in the Ninth Circuit. The issue has been waived by petitioner. See page 5 of Appendix A to the Petition for Writ of Certiorari.

The Ninth Circuit herein concluded that the absent employers' interests were not such as to render them "necessary" parties within the meaning of Rule 19(a) and that relief could be afforded respondents through an injunction against the JATC. Because the absent employers' were not necessary parties under Rule 19(a), they could not be deemed "indispensable parties" under Rule 19(b) ("... only if the court decides that it must dismiss because of the absence of a 19(a) party is that party given the conclusory label 'indispensable.'" English v. Seaboard Coast Line R.R. Co., 465 F.2d 1354, 1361 (5th Cir. 1972)).

In summary, this is simply a case wherein the Court of Appeals has applied the appropriate law in the context of this litigation and reached a predictable, correct and unremarkable result.

CONCLUSION

For all the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,,

Alberta M. Blumin

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Counsel for Respondents

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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of June, 1982, three copies of Respondents' Brief in Opposition were mailed, postage prepaid, to Steven McKae, Moore, Sizoo & Cantwell, 1333 Broadway, Suite 1040, Oakland, California 94612, counsel for petitioner. I further certify that all parties required to be served have been served.

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